

RECEIVED

AUG 14 1992

MAUPIN TAYLOR ELLIS & ADAMS, P.C.

ATTORNEYS AT LAW

1130 CONNECTICUT AVENUE, N.W., SUITE 750

WASHINGTON, D.C. 20036-3904

TELEFAX (202) 457-8558

TELEPHONE (202) 429-8910

RALEIGH ADDRESS

3200 BEECHLEAF COURT, SUITE 500  
RALEIGH, NORTH CAROLINA 27604-1064  
TELEFAX (919) 981-4300  
TELEPHONE (919) 981-4000

FEDERAL COMMUNICATIONS COMMISSION

OFFICE OF THE SECRETARY

448 LAKESHORE PARKWAY, SUITE 200  
ROCK HILL, SOUTH CAROLINA 29730-4264  
TELEFAX (803) 324-2093  
TELEPHONE (803) 324-8118

ORIGINAL  
FILE

92-64 /

August 14, 1992

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
Washington, D.C. 20554

Re: MM Docket No. 92-64  
Channel 295A  
Ocean City, Maryland

Dear Ms. Searcy:

Enclosed for filing on behalf of Wind N' Sea FM Limited Partnership and J.H. Communications is an original and six (6) copies of a "Joint Petition for Approval of Settlement Agreement" in regard to the above-referenced proceeding.

Please contact the undersigned in our Washington, D.C. office.

Respectfully submitted,

MAUPIN TAYLOR ELLIS & ADAMS, P.C.

BY:

  
Stephen T. Yelverton

Attorneys for J.H. Communications

ayw/sty/1450810a

No. of Copies rec'd 0+6  
List A B C D E

RECEIVED

AUG 14 1992

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In Re Applications of:	)	MM Docket No. 92-64
	)	
WIND N'SEA FM LIMITED	)	File No. BPH-901224ME
PARTNERSHIP	)	
	)	File No. BPH-901226MB
J. H. COMMUNICATIONS	)	
	)	
For Construction Permit	)	
for a new FM station on	)	
Channel 295A,	)	
Ocean City, Maryland	)	

TO: Administrative Law Judge  
Edward Luton

JOINT PETITION FOR APPROVAL OF SETTLEMENT AGREEMENT

Wind N'Sea FM Limited Partnership ("Wind") and J. H. Communications ("J.H.") (collectively "the parties"), by their attorneys, and pursuant to Section 311(c) of the Communications Act of 1934, as amended, 47 U.S.C. Section 311(c), and Section 73.3525 of the Commission's Rules, respectfully request approval of the Settlement Agreement attached hereto as Appendix A. In support of this request, the parties respectfully submit as follows.

This proceeding involves the above-captioned applications for construction permit for a FM radio broadcast station on Channel 295A at Ocean City, Maryland. These applications are mutually exclusive.

The attached Settlement Agreement, which is subject to prior Commission approval, envisions the grant of J.H.'s application and the dismissal of Wind's application in return for monetary consideration as noted in the Settlement Agreement. The

Settlement Agreement and the dismissal of Wind's application is conditioned upon the dismissal of the application of Bruce David Blanchard Limited Partnership (BPH-901226MA) becoming final and non-appealable.

The Settlement Agreement requests that the Commission allow J.H. to withdraw from and not be bound by the divestiture pledge which it made in this proceeding for Station WBSK-FM, Windsor, Virginia. However, the Settlement Agreement is not conditioned upon Commission approval of withdrawal of the divestiture pledge.

The Settlement Agreement is being filed within five (5) days after the date it was entered into by the parties. Approval of the Settlement Agreement will serve the public interest by obviating the need for a costly and time-consuming comparative proceeding and by facilitating the early inauguration of another local FM broadcast service to Ocean City, Maryland.

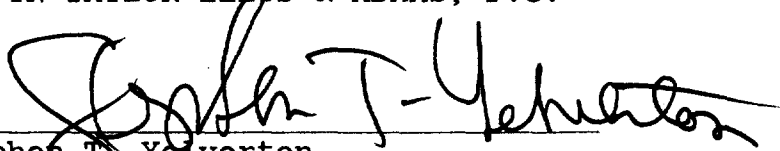
Declarations of the principals of each of the parties, attesting that no consideration has been paid or promised in exchange for the Settlement Agreement, apart from that which appears in the attached agreements, and that the respective applications were not filed for purposes of reaching or carrying out the Settlement Agreement, are attached as Appendix B.

WHEREFORE, in view of the foregoing, the parties believe that the attached Settlement Agreement is fully consistent with Section 73.3525 of the Rules and Section 311 of the Communications Act of 1934, as amended. Accordingly,

approval of the Settlement Agreement, dismissal of Wind's application with prejudice, and grant of J.H.'s application is requested.

Respectfully submitted,

MAUPIN TAYLOR ELLIS & ADAMS, P.C.

BY:   
Stephen T. Yelverton  
Attorneys for J.H. Communications  
1130 Connecticut Avenue, N.W.  
Suite 750  
Washington, D.C. 20036-3904  
Telephone: (202) 429-8910

BESOZZI & GAVIN

BY: \_\_\_\_\_  
Thomas L. Siebert

BY: \_\_\_\_\_  
Jeffrey Craven  
Attorneys for Wind N'Sea FM  
Limited Partnership  
1901 L Street, N.W., Suite 200  
Washington, D.C. 20036  
Telephone: (202) 293-7405

August 14, 1992

ayw/sty/1450810a

approval of the Settlement Agreement, dismissal of Wind's application with prejudice, and grant of J.H.'s application is requested.

Respectfully submitted,

MAUPIN TAYLOR ELLIS & ADAMS, P.C.

BY: \_\_\_\_\_  
Stephen T. Yelverton  
Attorneys for J.E. Communications  
1130 Connecticut Avenue, N.W.  
Suite 750  
Washington, D.C. 20036-3904  
Telephone: (202) 429-8910

BESOZZI & GAVIN

BY: Thomas L. Siebert  
Thomas L. Siebert

BY: Jeffrey Craven  
Jeffrey Craven  
Attorneys for Wind N'Sea FM  
Limited Partnership  
1901 L Street, N.W., Suite 200  
Washington, D.C. 20036  
Telephone: (202) 293-7405

August 14, 1992

ayw/sty/1450810a

SETTLEMENT AGREEMENT

AGREEMENT made and entered into this 11 day of August, 1992, by and between J.H. COMMUNICATIONS (hereinafter referred to as "J.H."), and WIND N' SEA FM LIMITED PARTNERSHIP (hereinafter referred to as "Wind").

WHEREAS, J.H. and Wind have mutually exclusive applications ("Applications") pending before the Federal Communications Commission ("Commission") requesting authority to construct and operate a radio broadcast station on FM Channel 295A in Ocean City, Maryland (the "facility"); and

WHEREAS, the applications of J.H. and Wind have been designated for a comparative hearing through which only one may be granted; and

WHEREAS, J.H. and Wind wish to avoid further costly proceedings and the time and financial burden that such proceedings place upon them and the Commission; and

WHEREAS, Wind is willing, subject to fulfillment of the terms of this Agreement, to dismiss with prejudice its application so as to facilitate the grant of a construction permit for FM Channel 295A to J.H., and J.H. has agreed to compensate Wind for such dismissal; and

WHEREAS, settlement of this proceeding will obviate the expense, delay, and commitment of Commission resources, and those of J.H. and Wind, otherwise necessary to resolve the pending applications through the comparative hearing process, and will bring an additional local FM radio broadcast service to the residents of Ocean City, Maryland; and

WHEREAS, the obligations of the parties hereunder are subject to the conditions set forth herein, and to the prior approval of the Commission.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties agree as follows:

1. Wind agrees to petition the Commission for dismissal of its application with prejudice, conditioned upon Commission approval of the terms and conditions contained in this Agreement.

2. J.H. agrees to pay to Wind the sum of Thirty Seven Thousand Five Hundred Dollars (\$37,500.00) (the "Settlement Amount") five (5) business days after the date upon which the Commission's Order approving the Settlement Agreement, dismissing Wind's Application, and granting J.H. a construction permit for FM Channel 295A, Ocean City, Maryland, becomes final as defined in Paragraph 4 hereof and within five (5) business days after the date which the dismissal of the application of Bruce David Blanchard, Limited Partnership (BPH-901226MA) becomes final as defined in Paragraph 4 and becomes non-appealable.

3. The Thirty Seven Thousand Five Hundred Dollars (\$37,500.00) settlement amount shall be personally guaranteed by the principals of J.H. In the event that on the date that the application of Wind is dismissed, and J.H. and/or its principals do not have available or readily obtainable Thirty Seven Thousand Five Hundred Dollars (\$37,500.00) in cash, Wind may request, within the time period before its dismissal becomes final under Commission Rules, reinstatement of its application for

construction permit. J.H would then request that its application be dismissed with prejudice and request that the application of Wind be granted. This grant would be without any monetary consideration from Wind to J.H. for dismissal of its application and without any monetary consideration from J.H. to Wind and with release from J.H. and its principals from any personal guarantee to pay any monetary consideration to Wind.

4. J.H. shall disburse the Settlement Amount as follows. It shall pay to Wind, within five (5) business days after the date upon which the Commission order granting the Joint Request and grant of J.H.'s construction permit application is a final order, the Thirty Seven Thousand Five Hundred Dollar (\$37,500.00) Settlement Amount by hand-delivery to Wind's counsel of a cashier's or certified check payable to Wind. An order will be deemed final when (1) the order contains no terms, restrictions, or qualifications which materially limit or conflict with any of the rights of the parties set forth or contemplated herein or in this Agreement or which would prevent J.H. from operating the facility in substantially the manner as is contemplated in its Application, as now amended, and (2) under the express provisions of the Communications Act of 1934, as amended, and the applicable Rules of the Commission and the Courts, the time for filing a request for administrative or judicial review of the action, or for the Commission to review such action on its own motion, shall have expired without such filing having been made or Commission action having been taken or, in the event of such filing or action, shall have been



disposed of favorably, to J.H., and the time for seeking further review of the action shall have expired without any request for such further review having been filed. The grant of J.H.'s application shall also be deemed final when the dismissal of the application of Bruce David Blanchard, Limited Partnership (BPH-901226MA) is final and non-appealable. It is agreed that a Commission order becomes final on the 42nd day after release of the text of the order, if no timely petition for reconsideration or judicial appeal is filed and the Commission has not reviewed the order on its own motion by that date pursuant to Section 1.117 of the Rules.

5. J.H. requests that it be allowed to withdraw its proposed divestiture of Station WBSK-FM, Windsor, Virginia. However, this Settlement Agreement is not conditioned upon Commission approval of withdrawal of the divestiture pledge.

6. Within five (5) business days after the execution of this Agreement, J.H. and Wind shall file it with the Commission together with a "Joint Request for Approval of Settlement Agreement" ("Joint Request"). The "Joint Request" shall be filed pursuant to, and shall comply with Section 73.3525 of the Commission's Rules, and shall have attached thereto properly executed declarations.

7. Recognizing that this Agreement is expressly subject to the prior consent of the Commission and the need for Commission approval prior to closing, J.H. and Wind shall cooperate and use their respective best efforts in the preparation and filing of all Commission applications and related

documents as shall be necessary or appropriate to consummate the transactions contemplated by this Agreement, including, but not limited to, appeals, applications and petitions, as appropriate, of any adverse rulings by the Commission or delegated authorities of the Commission. The parties hereto shall cause all such filings to be made as soon as reasonably practicable following the execution of this Agreement and each of them shall prosecute such filings with all reasonable diligence and otherwise cooperate with each other and use their best efforts to obtain the requisite Commission consent and approval promptly so that a Final Order may be obtained at the earliest possible date. It is understood and agreed that J.H. will bear the primary responsibility for coordinating, researching, preparing, and filing any materials submitted pursuant to this Agreement. In the event of a disagreement between J.H. and Wind as to strategy, the views of J.H. shall prevail.

8. This Agreement is the only agreement between the parties hereto and contains all of the terms and conditions agreed upon with respect to the subject matter hereof. All other Agreements, written or oral, between the parties are incorporated herein. This Agreement shall be binding upon the parties hereto, their heirs, legatees, successors, assigns and executors.

9. Each signatory to this Agreement warrants and represents that he has full legal authority to enter into, execute and carry out this Agreement.

10. Any notice required hereunder shall be in writing and shall be deemed given when delivered personally, or filed by

certified mail, postage prepaid, with return receipt requested to the following or their respective designees:

To J.H. Communications:

Stephen T. Yelverton, Esq.  
Maupin Taylor Ellis & Adams, P.C.  
1130 Connecticut Avenue, N.W., Suite 750  
Washington, D.C. 20036  
Telephone: (202) 429-8910

To Wind N' Sea FM Limited Partnership:

Thomas L. Siebert, Esq.  
Besozzi & Gavin  
1901 L. Street, N.W., Suite 200  
Washington, D.C. 20036  
(202) 293-7405

11. The parties agree that this Agreement can be executed in counterparts, all of which together, so executed, shall constitute one and the same instrument.

12. J.H. and Wind each acknowledge that they have made no representations or warranties except as specifically set forth herein.

13. This Agreement shall be construed under and governed by the laws of the District of Columbia.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

J.H. COMMUNICATIONS

BY: 

Title: Partner

WIND N' SEA FM LIMITED PARTNERSHIP

BY: \_\_\_\_\_

Title: \_\_\_\_\_

bbp/sty2/1450807A

08/13/92 15:05 919 981 4300

MTE&amp;A-RALEIGH

007

certified mail, postage prepaid, with return receipt requested to  
the following or their respective designees:

To J.H. Communications

Stephen T. Yelverton, Esq.  
Maupin Taylor Ellis & Adams, P.C.  
1130 Connecticut Avenue, N.W., Suite 750  
Washington, D.C. 20036  
Telephone: (202) 429-8910

To Wind N' Sea FM Limited Partnership

Thomas L. Siebert, Esq.  
Besozzi & Gavin  
1901 L. Street, N.W., Suite 200  
Washington, D.C. 20036  
(202) 293-7405

11. The parties agree that this Agreement can be  
executed in counterparts, all of which together, so executed,  
shall constitute one and the same instrument.

12. J.H. and Wind each acknowledge that they have made  
no representations or warranties except as specifically set forth  
herein.

13. This Agreement shall be construed under and  
governed by the laws of the District of Columbia.

IN WITNESS WHEREOF, the parties hereto have executed  
this Agreement on the date first written above.

J.H. COMMUNICATIONS

BY: \_\_\_\_\_  
Title: \_\_\_\_\_

WIND N' SEA FM LIMITED PARTNERSHIP

BY: Raymond Sley General Partner  
Title: \_\_\_\_\_

bbp/sty2/1450807A

DECLARATION

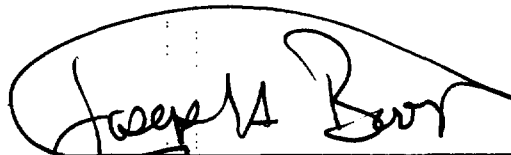
I, Joseph A. Booth, under penalty of perjury, hereby declare as follows:

1. I am a general partner of JH Communications and it is an applicant for a construction permit for a new FM broadcast station on Channel 295A in Ocean City, Maryland.

2. The application of JH was filed on December 26, 1990. It was filed in good faith and for the purpose of obtaining an authorization to construct the requested facilities. It was not filed with the purpose of entering into or carrying out a settlement agreement.

3. JH has entered into an agreement with Wind N' Sea FM Limited Partnership pursuant to which Wind will dismiss its application. Neither JH nor its principals have paid or received any consideration for the dismissal of Wind's application other than as set forth in the settlement agreement being tendered herewith. Approval of the settlement would be in the public interest inasmuch as it would permit the proper the prompt institution of service to the public and would conserve the commission's resources by obviating the need for a lengthy comparative hearing.

Date: 11 Aug 92



JOSEPH A. BOOTH  
General Partner  
JH Communications

dml/sty2/1450807B

COMMONWEALTH OF VIRGINIA

CITY OF VIRGINIA BEACH

I, the undersigned, a Notary Public in and for the said State and <sup>City</sup> ~~County~~, do hereby certify that Joseph A. Booth personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this the 11<sup>th</sup> day of August, 1992.

Joseph A. Carper  
Notary Public

My Commission Expires:

2/28/94

(NOTARIAL SEAL OR STAMP)

dml/sty2/1450807B

08/13/92

15:05

919 981 4300

MTE&amp;A-RALEIGH

2008

DECLARATION

I, MARGARET ISLEY, under penalty of perjury, hereby declare as follows:

1. Wind N' Sea FM Partnership is an applicant for a Construction Permit for the new FM station on Channel 295A in Ocean City, Maryland. I am the General Partner of Wind.
2. The Wind application was filed on December 24, 1990. It was filed in good faith and for the purpose of obtaining an authorization to construct the requested facilities. It was not filed with the purpose of entering into or carrying out a settlement agreement.
3. Wind has entered into an agreement with JH Communications pursuant to which Wind will dismiss its applications with prejudice. Neither Wind, nor its principals have paid or received any consideration for the dismissal of the Wind application other than as set forth in the Settlement Agreement being tendered herewith. Approval of the settlement would be in the public interest inasmuch as it would permit the prompt institution of service to the public and would conserve the Commission's resources by obviating the need for a lengthy comparative hearing.

WIND N' SEA LIMITED PARTNERSHIP

Date:

August 13, 1992

By:

Margaret Isley  
Margaret Isley, General Partner

dml/sty2/1450807C

08/12/92 14:41

0919 981 4300

MTE&A RALEIGH  
MTE&A RALEIGH

--- MTE&amp;A DC

0003  
0006DECLARATION

I, MARGARET ISLEY, under penalty of perjury, hereby declare as follows:

1. Wind N' Sea EM Limited Partnership is an applicant for a Construction Permit for a new EM station on Channel 295A in Ocean City, Maryland. I am the General Partner of Wind.

2. The Wind application was filed on December 24, 1990. It was filed in good faith and for the purpose of obtaining an authorization to construct the requested facilities. It was not filed with the purpose of entering into or carrying out a settlement agreement.

3. Wind has entered into an agreement with JH Communications, pursuant to which it will dismiss its application. Neither Wind nor its principals have paid or received any consideration, directly or indirectly, for the dismissal of the application of Bruce David Blanchard, Limited Partnership (BPR-901226MA).

WIND N' SEA LIMITED PARTNERSHIP

Date:

August 13, 1992

By:

Margaret Isley, General Partner

dal/sty2/1450807D



08/12/92 14:40  
08/12/92 11:00

919 981 4300  
919 981 4300

MTEA RALEIGH  
MTEA RALEIGH

--- MTEA DC

002  
003

STATE OF MARYLAND

COUNTY OF WORCHESTER

I, the undersigned, a Notary Public in and for the said State and County, do hereby certify that Margaret Isley personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this the 13<sup>th</sup> day of

August, 1992.

Diana B. Parsons  
Notary Public

My Commission Expires:

March 1, 1994

(NOTARIAL SEAL OR STAMP)

dal/sty2/1450807C

CERTIFICATE OF SERVICE

I, Sue W. Swinson, secretary in the law offices of Maupin Taylor Ellis & Adams, P.C., do hereby certify that on this 14th day of August, 1992, have caused to be hand-delivered or mailed, U.S. Mail, first-class, postage prepaid, a copy of the foregoing "Joint Petition for Approval of Settlement Agreement" to the following:

The Honorable Edward Luton\*  
Administrative Law Judge  
Room 225  
2000 L Street, N.W.  
Washington, D.C. 20554

Robert Zauner, Esq.\*  
Hearing Branch  
Mass Media Bureau  
Room 7212  
Federal Communications Commission  
Washington, D.C. 20554

Alan Campbell, Esq.  
Dow, Lohnes & Albertson  
1255 23rd Street, N.W.  
Suite 500  
Washington, D.C. 20037  
Counsel for Family Stations, Inc.

Sue W. Swinson  
Sue W. Swinson *by RRS*

\*Hand Delivery

ayw/sty/1450810a